

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

Claimant contests the attorney's fees claim of Attorney Dennis Phelps who requests attorney's fees from claimant's settlement based upon the percentages listed in K.S.A. 44-536. Claimant contends Attorney Phelps did not earn the amounts in question and raises the issue regarding claimant's inability to cross-examine and question Attorney Phelps at the hearing regarding these attorney's fees. A review of the transcript in question indicates claimant was offered the opportunity to ask Attorney Phelps questions by the Administrative Law Judge and declined the opportunity.

Claimant goes on to contend that, on page 13 of the hearing transcript, the Administrative Law Judge disallowed claimant from getting information from Attorney Phelps regarding justification for the work alleged. A review of the transcript, in particular page 13, fails to disclose evidence supporting the allegations made by claimant. The Administrative Law Judge appeared to offer claimant the opportunity to cross-examine the attorney, which offer was declined by the claimant. It does not appear as though claimant's rights were in any way infringed upon.

The settlement amount accepted by claimant is identical to the amount offered by the respondent during the time claimant was being represented by Attorney Phelps. The percentages allowable under the Kansas Workers Compensation Act for attorney's fees are clearly set out in K.S.A. 44-536. Claimant's settlement of \$45,000.00 with the respondent, when compared to the percentages allowable in K.S.A. 44-536 computes to a maximum fee in the amount of \$8,250.00. This is the sum requested by Attorney Phelps, along with expenses in the amount of \$545.00. This amount was awarded to Attorney Phelps as attorney's fees and expenses and said amount appears to be supported by K.S.A. 44-536. As such, the Appeals Board finds the Award of Administrative Law Judge Nelsonna Potts Barnes granting Attorney Phelps attorney's fees in the amount of \$8,250.00, and expenses in the amount of \$545.00, for a total fee of \$8,795.00, to be proper and same is affirmed. The Appeals Board further finds the Order of Administrative Law Judge Barnes granting reporter's fees in the amount of \$100.24 is supported by the record and is likewise affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated April 25, 1995, shall be and is affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of August, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Rito Duque, pro se
Dennis Phelps, Wichita, Kansas
Richard Liby, Wichita, Kansas
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director